

mental review of a covered project under NEPA and parts 1500 through 1508 of title 40, Code of Federal Regulations (or successor regulations).

(16) NEPA

The term “NEPA” means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(17) Participating agency

The term “participating agency” means an agency participating in an environmental review or authorization for a covered project in accordance with section 4370m-2 of this title.

(18) Project sponsor

The term “project sponsor” means an entity, including any private, public, or public-private entity, seeking an authorization for a covered project.

(Pub. L. 114-94, div. D, title XLI, § 41001, Dec. 4, 2015, 129 Stat. 1741.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969 or NEPA, referred to in pars. (6)(A), (11), and (15) and defined in (16), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

CODIFICATION

Section was enacted as part of the Fixing America’s Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

SAVINGS CLAUSE

Pub. L. 114-94, div. A, title XI, §11503(b), Dec. 4, 2015, 129 Stat. 1692, provided that: “Except as expressly provided in section 41003(f) [42 U.S.C. 4370m-2(f)] and subsection (o) of section 139 of title 23, United States Code, the requirements and other provisions of title 41 of this Act [probably means title XLI of div. D of Pub. L. 114-94, 42 U.S.C. 4370m et seq.] shall not apply to—

“(1) programs administered now and in the future by the Department of Transportation or its operating administrations under title 23, 46, or 49, United States Code, including direct loan and loan guarantee programs, or other Federal statutes or programs or projects administered by an agency pursuant to their authority under title 49, United States Code; or

“(2) any project subject to section 2045 of the Water Resources Development Act of 2007 (33 U.S.C. 2348).”

PLACEMENT IN UNITED STATES CODE

Pub. L. 114-94, div. D, title XLI, §41014, Dec. 4, 2015, 129 Stat. 1762, provided that: “The Office of the Law Revision Counsel is directed to place sections 41001 through 41013 of this title in chapter 55 of title 42, United States Code, as subchapter IV.”

§ 4370m-1. Federal Permitting Improvement Council

(a) Establishment

There is established the Federal Permitting Improvement Steering Council.

(b) Composition

(1) Chair

The Executive Director shall—

(A) be appointed by the President; and

(B) serve as Chair of the Council.

(2) Council members

(A) In general

(i) Designation by head of agency

Each individual listed in subparagraph (B) shall designate a member of the agency in which the individual serves to serve on the Council.

(ii) Qualifications

A councilmember¹ described in clause (i) shall hold a position in the agency of deputy secretary (or the equivalent) or higher.

(iii) Support

(I) In general

Consistent with guidance provided by the Director of the Office of Management and Budget, each individual listed in subparagraph (B) shall designate 1 or more appropriate members of the agency in which the individual serves to serve as an agency CERPO.

(II) Reporting

In carrying out the duties of the agency CERPO under this subchapter, an agency CERPO shall report directly to a deputy secretary (or the equivalent) or higher.

(B) Heads of agencies

The individuals that shall each designate a councilmember under this subparagraph are as follows:

- (i) The Secretary of Agriculture.
- (ii) The Secretary of the Army.
- (iii) The Secretary of Commerce.
- (iv) The Secretary of the Interior.
- (v) The Secretary of Energy.
- (vi) The Secretary of Transportation.
- (vii) The Secretary of Defense.
- (viii) The Administrator of the Environmental Protection Agency.
- (ix) The Chairman of the Federal Energy Regulatory Commission.
- (x) The Chairman of the Nuclear Regulatory Commission.
- (xi) The Secretary of Homeland Security.
- (xii) The Secretary of Housing and Urban Development.
- (xiii) The Chairman of the Advisory Council on Historic Preservation.
- (xiv) Any other head of a Federal agency that the Executive Director may invite to participate as a member of the Council.

(3) Additional members

In addition to the members listed in paragraphs (1) and (2), the Chairman of the Council on Environmental Quality and the Director of the Office of Management and Budget shall also be members of the Council.

(c) Duties

(1) Executive Director

(A) Inventory development

The Executive Director, in consultation with the Council, shall—

¹ So in original.

(i) not later than 180 days after December 4, 2015, establish an inventory of covered projects that are pending the environmental review or authorization of the head of any Federal agency;

(ii)(I) categorize the projects in the inventory as appropriate, based on sector and project type; and

(II) for each category, identify the types of environmental reviews and authorizations most commonly involved; and

(iii) add a covered project to the inventory after receiving a notice described in section 4370m-2(a)(1) of this title.

(B) Facilitating agency designation

The Executive Director, in consultation with the Council, shall—

(i) designate a facilitating agency for each category of covered projects described in subparagraph (A)(ii); and

(ii) publish the list of designated facilitating agencies for each category of projects in the inventory on the Dashboard in an easily accessible format.

(C) Performance schedules

(i) In general

Not later than 1 year after December 4, 2015, the Executive Director, in consultation with the Council, shall develop recommended performance schedules, including intermediate and final completion dates, for environmental reviews and authorizations most commonly required for each category of covered projects described in subparagraph (A)(ii).

(ii) Requirements

(I) In general

The performance schedules shall reflect employment of the use of the most efficient applicable processes, including the alignment of Federal reviews of projects and reduction of permitting and project delivery time.

(II) Limit

(aa) In general

The final completion dates in any performance schedule for the completion of an environmental review or authorization under clause (i) shall not exceed the average time to complete an environmental review or authorization for a project within that category.

(bb) Calculation of average time

The average time referred to in item (aa) shall be calculated on the basis of data from the preceding 2 calendar years and shall run from the period beginning on the date on which the Executive Director must make a specific entry for the project on the Dashboard under section 4370m-2(b)(2) of this title (except that, for projects initiated before that duty takes effect, the period beginning on the date of filing of a completed application), and ending on the date of the issuance of a record of decision or other final agency action on the review or authorization.

(cc) Completion date

Each performance schedule shall specify that any decision by an agency on an environmental review or authorization must be issued not later than 180 days after the date on which all information needed to complete the review or authorization (including any hearing that an agency holds on the matter) is in the possession of the agency.

(iii) Review and revision

Not later than 2 years after the date on which the performance schedules are established under this subparagraph, and not less frequently than once every 2 years thereafter, the Executive Director, in consultation with the Council, shall review and revise the performance schedules.

(D) Guidance

The Executive Director, in consultation with the Council, may recommend to the Director of the Office of Management and Budget or to the Council on Environmental Quality, as appropriate, that guidance be issued as necessary for agencies—

(i) to carry out responsibilities under this subchapter; and

(ii) to effectuate the adoption by agencies of the best practices and recommendations of the Council described in paragraph (2).

(2) Council

(A) Recommendations

(i) In general

The Council shall make recommendations to the Executive Director with respect to the designations under paragraph (1)(B) and the performance schedules under paragraph (1)(C).

(ii) Update

The Council may update the recommendations described in clause (i).

(B) Best practices

Not later than 1 year after December 4, 2015, and not less frequently than annually thereafter, the Council shall issue recommendations on the best practices for—

(i) enhancing early stakeholder engagement, including fully considering and, as appropriate, incorporating recommendations provided in public comments on any proposed covered project;

(ii) ensuring timely decisions regarding environmental reviews and authorizations, including through the development of performance metrics;

(iii) improving coordination between Federal and non-Federal governmental entities, including through the development of common data standards and terminology across agencies;

(iv) increasing transparency;

(v) reducing information collection requirements and other administrative burdens on agencies, project sponsors, and other interested parties;

(vi) developing and making available to applicants appropriate geographic information systems and other tools;

(vii) creating and distributing training materials useful to Federal, State, tribal, and local permitting officials; and

(viii) addressing other aspects of infrastructure permitting, as determined by the Council.

(C) Meetings

The Council shall meet not less frequently than annually with groups or individuals representing State, tribal, and local governments that are engaged in the infrastructure permitting process.

(3) Agency CERPOs

An agency CERPO shall—

(A) advise the respective agency councilmember on matters related to environmental reviews and authorizations;

(B) provide technical support, when requested to facilitate efficient and timely processes for environmental reviews and authorizations for covered projects under the jurisdictional responsibility of the agency, including supporting timely identification and resolution of potential disputes within the agency or between the agency and other Federal agencies;

(C) analyze agency environmental review and authorization processes, policies, and authorities and make recommendations to the respective agency councilmember for ways to standardize, simplify, and improve the efficiency of the processes, policies, and authorities, including by implementing guidance issued under paragraph (1)(D) and other best practices, including the use of information technology and geographic information system tools within the agency and across agencies, to the extent consistent with existing law; and

(D) review and develop training programs for agency staff that support and conduct environmental reviews or authorizations.

(d) Administrative support

The Director of the Office of Management and Budget shall designate a Federal agency, other than an agency that carries out or provides support only for projects that are not covered projects, to provide administrative support for the Executive Director, and the designated agency shall, as reasonably necessary, provide support and staff to enable the Executive Director to fulfill the duties of the Executive Director under this subchapter.

(Pub. L. 114-94, div. D, title XLI, § 41002, Dec. 4, 2015, 129 Stat. 1743.)

CODIFICATION

Section was enacted as part of the Fixing America's Surface Transportation Act, also known as the FAST Act, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4370m-2. Permitting process improvement

(a) Project initiation and designation of participating agencies

(1) Notice

(A) In general

A project sponsor of a covered project shall submit to the Executive Director and the facilitating agency notice of the initiation of a proposed covered project.

(B) Default designation

If, at the time of submission of the notice under subparagraph (A), the Executive Director has not designated a facilitating agency under section 4370m-1(c)(1)(B) of this title for the categories of projects noticed, the agency that receives the notice under subparagraph (A) shall be designated as the facilitating agency.

(C) Contents

Each notice described in subparagraph (A) shall include—

(i) a statement of the purposes and objectives of the proposed project;

(ii) a concise description, including the general location of the proposed project and a summary of geospatial information, if available, illustrating the project area and the locations, if any, of environmental, cultural, and historic resources;

(iii) a statement regarding the technical and financial ability of the project sponsor to construct the proposed project;

(iv) a statement of any Federal financing, environmental reviews, and authorizations anticipated to be required to complete the proposed project; and

(v) an assessment that the proposed project meets the definition of a covered project under section 4370m of this title and a statement of reasons supporting the assessment.

(2) Invitation

(A) In general

Not later than 45 days after the date on which the Executive Director must make a specific entry for the project on the Dashboard under subsection (b)(2)(A), the facilitating agency or lead agency, as applicable, shall—

(i) identify all Federal and non-Federal agencies and governmental entities likely to have financing, environmental review, authorization, or other responsibilities with respect to the proposed project; and

(ii) invite all Federal agencies identified under clause (i) to become a participating agency or a cooperating agency, as appropriate, in the environmental review and authorization management process described in section 4370m-4 of this title.

(B) Deadlines

Each invitation made under subparagraph (A) shall include a deadline for a response to be submitted to the facilitating or lead agency, as applicable.